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Attorney for Plaintiff
JONATHAN SAPAN

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JONATHAN SAPAN,

Plaintiff,

vs.

SOLARMAX TECHNOLOGY, INC., a
California Corporation; and DAVID HSU,
an individual,

Defendants.

Case No.: '15CV0897 MMAMDD

**COMPLAINT FOR DAMAGES,
INCLUDING PUNITIVE
DAMAGES, INTEREST AND
ATTORNEY'S FEES, AND
FOR INJUNCTIVE RELIEF**

**Violation(s) of Telephone
Consumer
Protection Act of 1991
Trespass to Chattel
Unfair Business Practices**

COMES NOW Plaintiff JONATHAN SAPAN (hereinafter referred to as
"Plaintiff") who alleges as follows:

JURISDICTIONAL ALLEGATIONS

1
2 1. Plaintiff is, and at all times herein mentioned was, a resident of the
3 County of San Diego, State of California
4

5 2. Defendant Solarmax Technology, Inc. ("Solar Max") is, and at all
6 times herein mentioned was, a California Corporation, doing business in the
7 County of San Diego, State of California.
8

9 3. Defendant David Hsu is, and at all times herein mentioned was, an
10 individual doing business in the County of San Diego, State of California.
11

12 4. This case is filed pursuant to the Telephone Consumer Protection Act
13 of 1991, 47 U.S.C. §227 et. seq. The U.S. Supreme Court recently decided that
14 federal courts have federal question subject matter jurisdiction over such civil
15 actions under 28 U.S.C. §§ 1331 and 1441. *Mims v. Arrow Fin. Services, LLC*, --
16 U.S. --, 132 S.Ct. 740, 753 (2012). The state law claim herein arises out of a
17 common nucleus of operative facts and is subject to supplemental jurisdiction
18 pursuant to 28 U.S.C. § 1367.
19
20
21

22 5. At all times herein mentioned each defendant was the partner, agent
23 and employee of each co-defendant herein and was at all times acting within the
24 scope of such partnership, agency and employment and each defendant ratified the
25 conduct of each co-defendant herein.
26

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28

FACTUAL SUMMARY

6. JONATHAN SAPAN received three (3) prerecorded calls and seven (7) live calls to his residential phone line (858-324-9001) from Defendants wherein they tried to pitch solar installation services on the following dates and times and using the following Caller ID (“CID”) number and name:

- July 1, 2014 at 4:00 pm, CID 909-235-7753
- July 1, 2014 at 4:05 pm, CID 312-208-3149
- July 17, 2014 at 5:36 pm, CID 909-235-7753
- July 17, 2014 at 5:40 pm, CID 312-208-3149
- August 4, 2014 at 4:38 pm, CID 619-607-3082
- August 4, 2014 at 4:45pm, CID 312-208-3149
- August 8, 2014 at 10:39 am, CID 619-607-3082 “SOLARMAX”
- August 15, 2014 at 12:31 pm, CID 323-429-4355
- September 5, 2014 at 4:05 pm, CID 858-324-6070
- September 15, 2014 at 3:31 pm, CID 858-324-6070

7. Mr. Sapan’s home phone has been listed on the federal “Do Not Call” registry maintained by the Federal Trade Commission from August 17, 2013 to the present.

8. While each of the calls complained of above used a Caller ID number, only one (1) of the calls transmitted accurate Caller ID name information as required by law. 47 C.F.R. § 64.1601(e).

9. Mr. Sapan alleges on information and belief that Defendants also transmitted the other calls, which went unanswered, to pitch the same debt consultancy services.

1 10. None of the prerecorded calls complained of were introduced by a live
2 natural person as required by the California Consumer Legal Remedies Act.
3

4 **FIRST SET OF ILLEGAL CALLS**
5

6 11. During the first call on July 1, 2014 at 4:00 pm, Defendants called Mr.
7 Sapan's home phone number using CID number 909-235-7753.
8

9 12. The call used an unidentified robotic voice that instructed Mr. Sapan
10 to leave his name and number in order to receive more information on purchasing
11 solar instillation services.
12

13 13. In order to determine who was calling him with a prerecorded
14 messages that did not identify the caller, Mr. Sapan gave a false name ("Mr.
15 Thomas") and left specific instructions in the message that whoever it was could
16 only call him at a separate number (619-333-0142) which Mr. Sapan uses to
17 investigate shady callers who will not identify themselves.
18

19 14. Only five minutes after this prerecorded call, on July 1, 2014 at 4:05
20 pm, "Alex" called Mr. Sapan from a second CID number, 312- 208-3149.
21

22 15. "Alex" proceeded to pitch solar instillation services to Mr. Sapan.
23

24 16. To determine who was behind the illegal call, Mr. Sapan feigned
25 interest by inquiring about website information and "Alex provided Mr. Sapan
26 with a false website name, solar-complete.com, which does not exist.
27
28

1 17. On July 17, 2014 at 5:36 pm, Defendants called Mr. Sapan from CID
2 number 909-235-7753, which is the same CID number listed during the first call.

3 18. This call used the exact same prerecorded message as the first call.

4 19. The robotic voice again instructed Mr. Sapan to leave his name and
5 number to receive more information on purchasing solar instillation services.
6

7 20. Mr. Sapan again provided his false name and told them to call back at
8 his separate investigation number (619-333-0142) to find out which organization
9 was behind the illegal calls.
10

11 21. And just like the first time, Defendants called Mr. Sapan from CID
12 number 312-208-3149 only five minutes after he left a message with their
13 prerecorded calling machine, at July 17, 2014 at 5:40 pm.
14

15 22. Similar to the previous live call, an unnamed individual attempted to
16 pitch Mr. Sapan solar energy products, and schedule an in person appointment but
17 would not divulge their company name.
18

19 23. On August 4, 2014 at 4:38 pm, Defendants called Mr. Sapan from
20 CID number 619-607-3082.
21

22 24. This call used a different prerecorded message from the first and
23 second prerecorded calls.
24

25 25. The robotic voice again inquired about interest in solar systems but
26 this time asked to “press 1” if interested.
27
28

1 26. Still wanting to find out who was making these illegal calls, Mr.
2 Sapan pressed 1 and was put to a voicemail message that asked him to leave his
3 name and number.
4

5 27. And again, Mr. Sapan provided the fictitious name, “Mr. Thomas”,
6 and told them to call him back only at 619-333-0142.
7

8 28. Just like the first two times, Defendants called back to Mr. Sapan’s
9 residential number—not the investigative number he gave them—only moments
10 later, on August 4, 2014 at 4:45 pm,
11

12 29. Just like the first two times, someone saying she was “Danielle” of
13 “Solar Energy Choice” tried to pitch Mr. Sapan on a solar energy system.
14

15 30. Just like the first two times, the live call following the prerecorded
16 call used the CID number 312-208-3149.
17

18 31. Growing weary of this pattern, Mr. Sapan feigned interest using the
19 “Mr. Thomas” name but insisted that they could only speak to him at his separate
20 number 619-333-0142.
21

22 **LEGAL CALLS TO MR. SAPAN’S INVESTIGATION LINE**
23 [Establishing Defendants As The Caller]
24

25 32. The next day, on August 5, 2014 at 11:45 am from CID number 951-
26 300-0751, “Rose” from “Solarmax” called Mr. Sapan and left a voice message.
27

28 33. This call marks the first of ten (10) calls transmitted to Mr. Sapan’s

1 separate investigation line 619-333-0142.

2 34. These ten calls were legitimate callbacks to the investigative number
3 Mr. Sapan had given Defendants permission to call and are not claimed as TCPA
4 violations herein, unlike the foregoing violative calls.
5

6 35. In this first call to Mr. Sapan's separate investigation line 619-333-
7 0142, "Rose" left a voicemail for Mr. Thomas and pitched solar energy products
8 on behalf of Solarmax.
9

10 36. Mr. Sapan performed a Google search of the CID number from this
11 call from "Rose", 951-300-0751, immediately after receiving the voicemail.
12

13 37. At that time this number was listed on Defendants' website
14 solarmaxtech.com, but appears to have been since taken off that site.
15

16 38. Regarding the ten (10) legal callbacks to the investigation line, two (2)
17 CID numbers 951-300-0751 and 951-300-0788 were used to call Mr. Sapan.
18

19 39. Mr. Sapan performed a Google search of the CID number 951-300-
20 0788 immediately after receiving the first call from this number on August 11,
21 2014 at 9:38 am.
22

23 40. At that time this number was listed on Defendants' website
24 solarmaxtech.com, but appears to have been since taken off that site.
25

26 41. At the time of drafting this Complaint (4/20/15), a Google search of
27 the number 951-300-0788 still gives "Solarmax Technology, Inc."
28

1 www.solarmaxtech.com 3080 12th St. Riverside, CA 92507” as the second result.

2 42. And the third result is a link to an Angie’s List advertisement for
3 SolarMax Technology giving the same Riverside address.
4

5 43. A screenshot taken by Christopher J. Reichman [SBN250485] of said
6 Google search on April 20, 2014 is attached hereto as Exhibit 1 and incorporated
7 herein as if set forth verbatim.
8

9 44. Furthermore, during settlement discussions between Mr. Sapan and
10 Craig Swart, an employee of Solar Max, Mr. Swart’s signature block lists 951-300-
11 0788 as his contact phone number.
12

13 45. A redacted version of the September 5, 2014 letter from Craig Swart
14 showing only the signature block is attached hereto as Exhibit 2 and incorporated
15 herein as if set forth verbatim.
16

17 46. These ten calls to Mr. Sapan’s alternate investigative number prove
18 that Defendants were behind the prior illegal calls to his residential line, as well as
19 the subsequent illegal calls to his residential line detailed below.
20
21

22 **SECOND SET OF ILLEGAL CALLS**
23

24 47. On August 8, at 10:39 am, Defendants called Mr. Sapan’s residential
25 line (again, 858-324-9001) from CID number 619-607-3082.
26

27 48. The CID number 619-607-3082 is the same used during the fifth
28 illegal call to Mr. Sapan on August 4, 2014 at 4:38 pm, as detailed above.

1 49. Unlike the previous use of this CID number, however, this call on
2 August 8th also transmitted a CID name of “SOLARMAX”.

3 50. The person calling gave no name or company name and just attempted
4 to pitch Mr. Sapan solar energy products.
5

6 51. Mr. Sapan expressed no interest in any solar energy products, since he
7 had now discovered Defendants’ identity
8

9 52. On August 15, 2015 at 12:31 pm, Defendants called Mr. Sapan’s
10 residential line from a fourth CID number, 323-429-4355, wherein they attempt to
11 pitch solar energy products to him.
12

13 53. On September 5, 2014 at 4:05 pm, Defendants called Mr. Sapan’s
14 residential line from a fifth CID number, 858-324-6070, wherein they attempted to
15 pitch solar energy products to him.
16

17 54. On September 15, 2014 at 3:31 pm, “Danielle” of “Solar Energy
18 Choice” called Mr. Sapan’s residential line again this time using the CID number,
19 858-324-6070, and again attempted to pitch solar energy products to him.
20
21

22 55. The Bloomberg Business Page lists Defendant David Hsu as Chief
23 Executive Officer of Solar Max Technology, Inc.
24

25 56. The publication Business Wire TM ran an article on August 20, 2012
26 wherein it detailed SolarMax Technology moving offices to its current Riverside
27 address which quoted David Hsu, who self identified as Chief Executive Officer of
28

1 Solar Max Technology, Inc.:

2 “SolarMax Technology Inc. is moving its corporate headquarters from
3 the City of Industry to the Emerald City of Riverside! SolarMax
4 Tech. is set to occupy a 165,000 square-foot office and warehouse
5 building at 3080 12th Street in Riverside. The move will bring and
6 create directly and indirectly 1,600 jobs. ‘It was the next step in our
7 growth,’ said David Hsu, SolarMax Technology CEO. ‘We were
8 looking at our expansion plans and realized that going to Riverside
9 made sense because not only is it sunny most of the year, but the city
10 is focused on green technology and development and the area is
growing.’” [available at <http://www.businesswire.com/news/home/20120820005374/en/SolarMax-Technology-Moves-Headquarters-Riverside-California#.VTWaTvBGRbQ>]

11 57. The City of Riverside Office of Economic Development also has a
12 posted June 23, 2014 Business Spotlight web blog entry detailing SolarMax
13 Technology again identifying David Hsu as the Chief Executive Officer:
14

15 “Chinese Ambassador Consul General Liu Jian recently came for a
16 visit to SolarMax, which included a warm welcome to the City of
17 Riverside by Mayor Rusty Bailey, members of his staff and the
18 executive staff of SolarMax including CEO David Hsu and CFO
19 Ching Liu. The group was then given a tour of SolarMax’s newly
20 renovated historic headquarters facility guided by CEO David Hsu.
21 The purpose of the visit was to see firsthand how businesses that have
22 relocated to the City of Riverside have prospered.” [available at
<http://riversideoed.com/news-media/article/business-spotlight-solarmax-technology-inc>].

23 58. SolarMax lists its size as “201-500 employees” on its LinkedIn
24 profile, though only 80 employees are linked. [available at
25 <https://www.linkedin.com/company/solarmax-technology>].
26

27 59. None of SolarMax Technology’s linked employees on LinkedIn have
28

1 a title indicating officer-level managerial duties in marketing or sales sufficient to
2 give them apparent authority to run a telemarketing campaign or hire an outside
3 group to conduct one for SolarMax Technology.
4

5 60. None of the public announcements like those quoted above refer to a
6 person having a title indicating officer-level managerial duties in marketing or
7 sales sufficient to give them apparent authority to run a telemarketing campaign or
8 hire an outside group to conduct one for SolarMax Technology.
9

10 61. David Hsu, as Chief Executive Officer, is the only publicly named
11 officer of SolarMax Technology having a title indicating officer-level managerial
12 duties in marketing or sales sufficient to give them apparent authority to run a
13 telemarketing campaign or hire an outside group to conduct one.
14
15

16 62. Plaintiff alleges on information and belief that Defendant David Hsu
17 made the violative calls, ordered them made, knew the calls described above were
18 being made and did nothing, or was willfully and recklessly ignorant of the fact his
19 company was making the calls described above.
20
21

22 63. Mr. Sapan has been harmed by the junk calls complained of herein by
23 the direct waste of his time during the calls themselves, the indirect waste of time
24 in having to break from other important tasks and spend time catching up after
25 these junk calls, the waste of telephone service which he and not Defendants must
26 pay for, the costs of having to pursue legal remedies, and in the aggravation and
27
28

1 consequent health effects of stress these illegal intrusions have caused.

2
3 **FIRST CAUSE OF ACTION**

4 [Violation of Telephone Consumer Protection Act of 1991
5 For Three (3) Prerecorded Telesolicitation Calls]

6 64. Plaintiff realleges all paragraphs above and incorporates them herein
7 by reference.

8 65. Plaintiff is bringing this action pursuant to the provisions of the
9 Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R.
10 §64.1200 – “TCPA”).

11
12 66. Subdivision (b) (1) (B) of Section 227 of Title 47 of the United States
13 Code makes it unlawful for any person to “initiate any telephone call to any
14 residential telephone line using an artificial or prerecorded voice to deliver a
15 message without the prior express consent of the called party, unless the call is
16 initiated for emergency purposes or is exempted by rule or order of the
17 Commission under paragraph (2) (B);”

18
19 67. Defendants have called Plaintiff’s residential telephone line, using an
20 artificial or prerecorded voice to deliver a message, without Plaintiff’s express
21 permission during the statutory period of the last 4 years, pursuant to 28 U.S.C. §
22 1658. These calls are the only calls known to Plaintiff at this time and Plaintiff
23 states on information and belief, without yet having the aid of full discovery, that it
24 is quite likely that Defendant has made many more violative calls to Plaintiff’s
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1 residential telephone line. These calls were not made for any emergency purpose,
 2 nor were these calls exempt under subdivisions (a) and/or (c) of section 64.1200 of
 3 title 47 of the Code of Federal Regulations.
 4

5 68. Subdivision (b)(3) of section 227 of title 47 of the United States Code
 6 permits a private right of action in state court for violations of 47 U.S.C. §227 (b)
 7 (1) (B). Plaintiff may obtain relief in the form of injunctive relief, or Plaintiff may
 8 recover \$500.00 for each violation, or both. If the court finds that defendants'
 9 violations were willful or knowing, it may, in its discretion, award up to three
 10 times that amount.
 11
 12

13 **SECOND CAUSE OF ACTION**

14 [Violation of Telephone Consumer Protection Act of 1991
 15 For All Ten (10) Telesolicitation Calls]
 16

17 69. Plaintiff realleges all paragraphs above and incorporates them herein
 18 by reference.
 19

20 70. Plaintiff is bringing this action pursuant to the provisions of the
 21 Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R.
 22 §64.1200 – “TCPA”).
 23

24 71. Subdivision (c) (2) of Section 64.1200 of Title 47 of the Code of
 25 Federal Regulations makes it unlawful for any person to “initiate any telephone
 26 solicitation” to “A residential telephone subscriber who has registered his or her
 27
 28

1 telephone number on the national do-not-call registry of persons who do not wish
2 to receive telephone solicitations”.

3
4 72. At all times relevant to this complaint, Plaintiff had registered his
5 residential telephone number on the national do-not-call registry maintained by the
6 U.S. Government.

7
8 73. Defendants have called Plaintiff’s residential telephone line for
9 solicitation purposes during the statutory period of the last 4 years, pursuant to 28
10 U.S.C. § 1658. These calls are the only calls known to Plaintiff at this time and
11 Plaintiff states on information and belief, without yet having the aid of full
12 discovery, that it is quite likely that Defendant has made many more violative calls
13 to Plaintiff’s residential telephone line. These calls were not made in error, nor did
14 Defendant have express permission from Plaintiff to call, nor did Defendant have a
15 personal relationship with Plaintiff. 37 C.F.R. § 64.1200 (c) (i), (ii), & (iii).
16
17
18

19 74. Subdivision (c)(5) of section 227 of title 47 of the United States Code
20 permits a private right of action in state court for violations the national do-not-call
21 registry rules promulgated thereunder. Plaintiff may obtain relief in the form of
22 injunctive relief, or Plaintiff may recover \$500.00 for each violation, or both. If
23 the court finds that defendants' violations were willful or knowing, it may, in its
24 discretion, award up to three times that amount.
25
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THIRD CAUSE OF ACTION

[Violation(s) of California Civil Code § 1770 (a) (22) (A)
For Three (3) Prerecorded Telesolicitation Calls]

75. Plaintiff realleges all paragraphs above and incorporates them herein by reference.

76. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages disseminated within the state be introduced by a live, natural voice giving the name of the entity calling, the name of the entity being represented, an address or phone number for that entity, and asking permission to play the recording. Defendant's illegal prerecorded telemarketing calls to Plaintiff failed to comply with this requirement.

77. As a proximate result of defendants' violation of Civil Code section 1770, plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be proven at trial.

78. Civil Code section 1780 (a) (2) provides for an injunction against future conduct in violation of Civil Code section 1770.

79. Civil Code section 1780 (a) (4) provides for an award of punitive damages for violations of Civil Code section 1770.

80. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs harmed by California Civil Code §1770 (a) (22) (A) violations.

FOURTH CAUSE OF ACTION

[Trespass to Chattel – All Ten (10) Calls]

81. Plaintiff realleges all paragraphs above and incorporates them herein by reference.

82. The conduct by defendants complained of herein, namely illegally calling Plaintiff's phone, constitutes an electronic trespass to chattel.

83. At no time did Plaintiff consent to this trespass.

84. As a proximate result of these intrusions, Plaintiff suffered damage in an amount according to proof, but no less than 4% of his monthly phone bills in July and August of 2014 since Defendants calls constituted 4% or more of the total calls to his phone in the two months at the height of their junk calling campaign.

85. In making the illegal calls described above, defendants were guilty of oppression and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

FIFTH CAUSE OF ACTION

[Engaging in Unfair Business Practices – All Ten (10) Calls]

86. Plaintiff realleges all paragraphs above and incorporates them herein by reference.

87. Because these telephone calls violate federal statutes, they are

1 unlawful business practices within the meaning of section 17200 of the Business
2 and Professions Code.

3 88. As a proximate result of these intrusions, Plaintiff suffered damage in
4 an amount according to proof, but no less than 4% of his monthly phone bills in
5 July and August of 2014 since Defendants calls constituted 4% or more of the total
6 calls to his phone in the two months at the height of their junk calling campaign.
7
8

9 89. Section 17203 of the Business and Professions Code entitles Plaintiff
10 to an injunction enjoining defendants from engaging in unfair or unlawful business
11 practices.
12
13
14

15 WHEREFORE Plaintiff prays for judgment against defendants, and each of
16 them, as follows:

17 On the FIRST CAUSE OF ACTION:

- 18 1. For an award of \$500.00 for each violation of 47 U.S.C. §227;
19 2. For an award of \$1,500.00 for each such violation found to have been
20 willful;

21 On the SECOND CAUSE OF ACTION:

- 22 3. For an award of \$500.00 for each violation of 47 C.F.R. §64.1200 (c)
23 (2);
24 4. For an award of \$1,500.00 for each such violation found to have been
25 willful;

26 ///

27 ///

1 On the THIRD CAUSE OF ACTION:

- 2 5. For compensatory damages according to proof;
- 3 6. For preliminary and permanent injunctions, enjoining Defendants, and
- 4 each of them, from engaging in activity in violation of California Civil
- 5 Code §1770 (a) (22) (A);
- 6 7. For punitive damages;
- 7 8. For attorney's fees;

8 On the FOURTH CAUSE OF ACTION:

- 9 9. For compensatory damages according to proof;
- 10 10. For punitive damages;

11 On the FIFTH CAUSE OF ACTION:

- 12 11. For preliminary and permanent injunctions, enjoining Defendants, and
- 13 each of them, from engaging in unfair or unlawful business practices
- 14 pursuant to section 17203 of the Business and Professions Code;

15 On ALL CAUSES OF ACTION:

- 16 12. For attorney's fees pursuant to California Code of Civil Procedure §
- 17 1021.5.
- 18 13. For costs of suit herein incurred; and
- 19 14. For such further relief as the Court deems proper.
- 20

21

22 DATED: April 20, 2015

PRATO & REICHMAN, APC

23

24

25 /s/Christopher J. Reichman, Esq.

26 By: Christopher J. Reichman, Esq.

27 **Prato & Reichman, APC**

28 Attorneys for Plaintiff

JONATHAN SAPAN